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REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

May 13, 1994

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REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

IN THE UNITED STATES

REGULATORY AND LEGISLATIVE MATTERS

103D CONGRESS

[1] Waxman Bill Clears Subcommittee

On May 12, 1994, Representative Henry Waxman's (D-Cal.) "Smoke-Free Environment Act" (H.R. 3434) was passed in a House subcommittee by a margin of 14-11. Waxman sponsored two amendments which remained in the bill as passed. One amendment will exempt restaurants, bars, prisons and tobacco shops. The second, prohibits children under the age of 15 from entering public smoking areas. The vote, which was taped by the C-span television network, took place in the House Health and Environment Subcommittee.

The bill now goes to the House Energy and Commerce Committee but is not expected to come up for consideration until after legislative action is taken on health care reform. Waxman's bill, as introduced in November 1993, would restrict smoking to separately ventilated areas of nearly every nonresidential building in the United States.

[2] Senate Subcommittee Holds May 11 Hearing on ETS

The Nuclear Regulation Subcommittee held a hearing on May 11, 1994, to consider the purported health effects of ETS exposure on nonsmokers. Among those testifying were EPA Administrator Carol Browner, Surgeon General Joycelyn Elders, and representatives of R.J. Reynolds, the American Lung Association, the Congressional Research Service and the National Cancer Institute.

All of the witnesses discussed the EPA Risk Assessment on ETS in their written submissions to the subcommittee; those opposed to current antismoking initiatives in Congress were critical of the ETS risk assessment, while those supporting the legislation sought to convince subcommittee members of its validity. Both Carol Browner and Joycelyn Elders expressed their support for the Smoke-Free Environment Act of 1993 (H.R. 3434, S. 1680), a bill introduced by Representative Henry Waxman (D-Cal.) that would restrict smoking to separately ventilated areas of nearly every nonresidential building in the country.

According to EPA Administrator Browner, a notice about her agency's cost benefit analysis of Representative Waxman's legislation will soon be published in the Federal Register to advise the public that the analysis is available for review and comment. Further details about the analysis appear in issue 71 of this Report, April 29, 1994. An economics expert from George Mason University extensively criticized the cost benefit analysis in the statement he submitted to the subcommittee.

[3] Bill Introduced to Establish EPA Risk Assessment Program

On April 28, 1994, Representative Herbert Klein (D-N.J.) introduced a bill (H.R. 4306) that would establish a comprehensive risk assessment program within the EPA. Entitled the "Risk Assessment Improvement Act of 1994," the bill has 15 cosponsors to date. Although the measure does not mandate that a risk assessment be conducted by the EPA for every rule, it does require that a program director develop risk assessment guidelines and see to it that the guidelines are "to the extent permitted by law, conducted, applied, and practiced throughout the Offices of the Agency."

The risk assessment program director would be required to "develop a process to conduct scientific peer review of all risk assessment guidelines developed by the EPA," and to review each guideline at least once every three years to keep pace with scientific developments. The program director would also be required to develop guidelines for risk characterizations at the agency and to identify research and training needs within the EPA regarding risk assessment application.

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Also included in the bill is a provision for the development of a pilot project on comparative risk analysis. The project "shall compare and rank a range of diverse environmental risks, both as to risks to and within an environmental medium and risks across environmental media." The bill would further direct the Office of Science and Technology Policy to survey the manner in which all federal agencies involved in risk assessment conduct such assessments and to promote coordination among agencies as to the use of risk assessments.

In introducing the measure, Representative Klein stated that there was a need for establishing "a sound and scientific basis for a clear, consistent, and comprehensive environmental policy." According to Klein, his bill would achieve that goal by strengthening and coordinating "the scientific methods used to calculate threats to human health and the environment."

Currently pending in Congress are a number of measures that address risk assessment issues. The Office of Congressional and Legislative Affairs provided a comparison of those measures on April 15, 1994. The bills compared include the Environmental Risk Reduction Act of 1993 (S. 110, H.R. 3111); the Risk Communication Act of 1993 (H.R. 2910); the Klein bill (H.R. 4306); and the amendments introduced to a number of environmental bills that would require the EPA to conduct cost/benefit analyses and risk assessments for every rule (S. 171, S. 1547).

[4] IAQ in Airline Cabins to be Focus of Congressional Hearing

According to a press report, a subcommittee hearing will be held on May 18, 1994, to address the health effects purportedly associated with the reduction of fresh air in airline cabins. The changes in aircraft ventilation occurred during the 1980s when outside air intake was reduced by 50 percent. Testimony is also reportedly scheduled to be taken on whether smoking should be permitted on international flights. *See International Herald Tribune*, April 25, 1994.

[5] Hearings Held on Education Appropriations Act

Hearings were held on May 4 and 5, 1994, in the Senate to consider the House measure (H.R. 6) to which Representative Richard Durbin's (D-Ill.) PRO-KIDS legislation has been attached. Durbin's amendment would restrict smoking to separately ventilated areas of federally funded facilities providing services to elementary or secondary school students. Enacted into law in March 1994 was a bill containing provisions that ban smoking in such facilities. "Pro-Children Act of 1994," sections 1041-1044, P.L. 103-227 ("Goals 2000: Educate American Act"). The Senate hearings on H.R. 6 were held by the Committee on Indian Affairs and the Education, Arts, and Humanities subcommittee.

U.S. Occupational Safety and Health Administration (OSHA)

[6] *ASH v. OSHA*: Final Briefs Submitted; Oral Argument Held

On May 12, 1994, oral argument took place as scheduled before the U.S. Court of Appeals, D.C. Circuit. Following argument, the court did not issue a ruling from the bench. The court will issue a written ruling in due course.

Final briefs were filed by the parties on April 22, 1994, with ASH continuing to object to the combined ETS/IAQ rulemaking proposed by OSHA, and with OSHA arguing to the court that it is proceeding at a pace consistent with its statutory mandate and the controversial nature of the subject matter.

ASH's petition for review seeks an order that would require OSHA to institute a separate rulemaking regulating ETS in the workplace. OSHA's motion to dismiss was denied by the court in May 1993, and a mediator failed in an attempt to resolve the dispute through alternative dispute resolution in December 1993. *ASH v. Department of Labor*, No. 92-1661 (U.S. Court of Appeals, D.C. Circuit) (filed December 22, 1992).

[7] Deadline Extension Requests Received by OSHA on Indoor Air Rulemaking

Chuck Adkins, OSHA's director of health standards, recently announced that OSHA has received requests for extension of the deadlines published in the *Federal Register* notice of proposed rulemaking on indoor air quality in indoor work environments. 59 FR 15968. Requests have also been received for a continuation or extension of the public hearings, which are presently scheduled to commence on July 12, 1994.

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Adkins, speaking at the National Coalition on Indoor Air Quality conference in Tampa, Florida, on May 5-7, said that the proposed rule does not ban smoking in the workplace, but provides "a standard so tight that you will have to ban or provide appropriate smoking rooms." Adkins stated that smoking is not necessary to any manufacturing process. Adkins also indicated that OSHA is currently working on a new economic impact analysis concerning its proposed rulemaking. Regarding indoor smoking, Adkins stated that, "For those of you who think OSHA's stand on smoking is crazy, tell us how to improve it."

The public comment period for OSHA's proposed rulemaking on indoor air quality is still scheduled to close June 29, 1994. Notices of intent to appear at the public hearings which are still scheduled for July 12, 1994, must be postmarked by June 20, 1994.

With respect to the dockets, the "8-series" portion of OSHA's public docket concerning the proposed rulemaking constitutes the "other evidence" relied upon by OSHA in addition to the evidence already in the previously existing RFI public docket (the 3-series exhibits to the Notice of Proposed Rulemaking). OSHA has completed the compilation of the "8-series" of the public docket such that now, for the first time, the complete file of references relied upon by OSHA is available to the public. The "9-series" of the public docket reflects comments received by OSHA in response to the notice published in the *Federal Register* on April 5, 1994. As of this writing, 112 comments have been received by OSHA. The "10-series" of OSHA's public docket includes all requests to appear at the public hearings presently scheduled for July 1994. As of this writing only one such request, by Jim Dinegar of the Building Owners and Managers Association (BOMA), has been filed.

OSHA's Notice of Proposed Rulemaking on Indoor Air Quality may be discussed by Joseph Dear, assistant secretary of labor in charge of OSHA, at a presentation before the American Industrial Hygiene Association annual meeting on May 26, 1994. Dear's presentation, "Teamwork with OSHA," is scheduled to begin at 8:00 a.m.

Future information regarding the public comments ("9-series") and requests for appear at public hearing ("10-series") received by OSHA will appear on the "In This Issue" page of this Report. Copies of the dockets will be available upon request.

[8] ASH Claims Lawsuit Forced OSHA to Initiate Rulemaking

In its most recent publication, ASH is claiming that its lawsuit has forced OSHA to "finally take the first official step towards regulating tobacco smoke in the workplace." ASH is urging its supporters to submit comments supporting a total ban on workplace smoking and urging a separate, fast-track ETS proceeding to the OSHA docket.

ASH is also suggesting to its supporters that "it would be appropriate for an outsider to file a complaint of child abuse/neglect/endangerment with the appropriate child care authorities if a child is being made seriously ill by tobacco smoke." According to ASH, the Oregon Children's Services Division removed an eight-month-old child from its mother's home after a physician notified child welfare authorities that the child was suffering respiratory problems as a result of exposure to her mother's smoking. *See ASH Smoking and Health Review*, March-April 1994.

[9] Maryland Labor Commissioner Holds Hearing on Workplace Smoking

On May 3, 1994, the Maryland Commissioner of Labor and Industry held a hearing to consider testimony regarding the proposed regulation that would restrict smoking to separately ventilated areas of every workplace in the state, including bars and restaurants. Some 50 individuals testified during the hearing.

Those supporting the measure included Dr. Elizabeth Fontham, James Repace, and representatives of ASH, the American Cancer Association, and the Restaurant Association of Maryland. Those offering testimony in opposition to the proposal included Dr. Domingo Aviado, Dr. Larry Holcomb, the Maryland Chamber of Commerce, local restaurant and bar associations, and a representative of The Tobacco Institute.

According to a press report, a spokesperson from Labor Commissioner Henry Kollein's office indicated that a final decision on the proposal could be made by the end of May 1994. The May 3 hearing was characterized as the "last chance" for public comment before state officials decide to adopt what would be the most

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far-reaching workplace smoking restrictions in the nation. Opponents of the measure reportedly claimed that state officials seem to have determined to impose the restrictions as proposed regardless of public comment and in spite of previous rejections of such proposals by the legislature. *See The Washington Post*, May 4, 1994.

U.S. Environmental Protection Agency (EPA)

[10] EPA Develops Model Smoking Law for New England Region

The administrator for EPA's Region I, covering six New England states, has begun to develop a model ordinance for the region in order to spur the adoption of consistent local smoking legislation affecting the workplace and other public buildings. Although EPA does not have any authority to directly regulate indoor air quality, the concept of a model ordinance has been made part of its "action agenda" in Region I.

Beginning in May 1994 local governing bodies are expected to be surveyed and asked to provide input into development of the model ordinance. A draft will reportedly be circulated in June for comment and final agency distribution is scheduled for July. The model ordinance will be developed in coordination with the New England Indoor Air Quality Work Group, an organization with representatives from state, local and federal agencies, as well as IAQ researchers and public health officials.

An environmental engineer for the region cited the EPA Risk Assessment on ETS and is quoted as saying, "We're very concerned about the environmental equity issues raised" when workers and the public receive differing levels of protection depending upon where their home or work is located. "We want every resident to receive at least the same amount of protection," he reportedly said.

Among other initiatives on EPA's action agenda in the region are: (i) the development of model guidelines for air quality management of ice skating rinks; (ii) the distribution of brochures and other information on the purported dangers of ETS to all New England obstetricians and pediatricians; (iii) the completion of training programs for science teachers about asbestos, lead, ETS and other purported "indoor air threats"; and (iv) the solicitation of Attorneys General in Rhode Island, Maine and New Hampshire to join the recommendations against smoking made by Attorneys General of other states in a November 1993 report.

According to press materials from EPA, the Region I administrator has sent letters to the chief executives of major fast food restaurant chains in the region, citing the ETS risk assessment and urging them to adopt smoking bans at their facilities. *See* BNA *Occupational Safety & Health Daily*, April 29, 1994.

[11] Speculation Continues As to Status of Cabinet Elevation Bill

According to a press report, environmentalists interpreted President Bill Clinton's failure to mention the Department of Environmental Protection Act (H.R. 3425) during his "Earth Day" address on April 21, 1994, as an indication that the bill is "dead." The measure, which would elevate EPA to cabinet level, was withdrawn from consideration in the House in February 1994, over a dispute as to whether it should contain a provision requiring EPA to conduct risk assessments and cost/benefit analyses for every regulation adopted. According to a press report citing administration and EPA sources, the legislation is simply on hold until the EPA and the White House can determine the best way to address the issue. *See Inside EPA*, April 29, 1994.

[12] Congressional Leaders Close to Compromise on Risk Assessment Provisions

According to a press report, Senators Bennett Johnston (D-La.) and Max Baucus (D-Mont.) are close to a compromise on statutory language that would require EPA to conduct cost/benefit analyses and risk assessments during rulemaking. The Senators will apparently agree to require such analysis for a narrowly-defined category of EPA regulations without threatening agency resources or hindering EPA's ability to implement congressional mandates. According to an EPA assistant administrator, the Clinton administration will not oppose an amendment of this nature to the Safe Drinking Water Act (S. 2019). If the compromise succeeds, a major impediment to passage of the EPA cabinet elevation bill (H.R. 3425) could be removed. *See Inside EPA*, May 6, 1994.

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WHITE HOUSE

[13] Environmental Accomplishments Report Cites ETS Activities

On April 21, 1994, President Bill Clinton released an Environmental Accomplishments Report in which he states, "The Clinton Administration is committed to educating Americans about the dangers of smoking -- the single biggest *preventable* cause of death in the United States." Although the report does not specifically cite the EPA Risk Assessment on ETS, it does note that "EPA scientists determined that second-hand smoke is a known human carcinogen and responsible for 3,000 lung cancer deaths each year and hundreds of thousands of respiratory illnesses in young children."

Among the ETS-related actions for which the administration claims responsibility are: (i) the July 1993 announcement by EPA administrator Carol Browner of smoking policy recommendations and an aggressive public education campaign; (ii) the administration's February 1994 announcement of support for the Smoke-Free Environment Act (H.R. 3434); (iii) OSHA's notice of proposed rulemaking on ETS in the workplace; and (iv) the Department of Defense announcement banning smoking in its 400,000 buildings.

U.S. GENERAL SERVICES ADMINISTRATION (GSA)

[14] GSA Announces Changes to Ventilation Standards

According to a press report, the GSA administrator announced on April 26, 1994, that ventilation standards would be improved and temperature guidelines would be relaxed in the 7,200 buildings GSA owns, operates and leases nationwide. The changes will affect some one million federal workers. Outside air exchange rates will reportedly be increased to meet ASHRAE standards. The modifications were apparently prompted by tenant concerns about indoor air quality and workplace temperatures. According to the GSA, mandatory energy conservation goals will be maintained by building renovations and new technologies that promote energy conservation. *See PR Newswire*, April 26, 1994.

STATE AND LOCAL GOVERNMENTS

[15] Supporters of Statewide Smoking Legislation Make Announcement

On May 9, 1994, supporters of a ballot initiative that would impose uniform smoking restrictions throughout the state of California, reportedly announced that they had collected and turned in the 600,000 signatures required to put the initiative on California's November 1994 ballot. The proposal, entitled the "Uniform Tobacco Control Act," would impose restrictions on smoking in restaurants and workplaces, and would preempt local smoking ordinances. Those announcing the results of the signature campaign included the director of the San Francisco Hotel Association, representatives of the San Diego Tavern and Restaurant Association, Californians for Statewide Smoking Restrictions and other hospitality industry organizations, and Philip Morris USA. *See PR Newswire*, May 6 and 9, 1994.

[16] California's DART Committee Agrees to Consider ETS as Reproductive Toxicant

On May 5, 1994, the Development and Reproductive Toxicant (DART) Identification Committee voted to consider ETS for listing under California's Proposition 65 as a reproductive toxicant. The staff of the California Office of Environmental Health Hazard Assessment (OEHHA) was directed to prepare a full data review for the committee's consideration. The data review will include studies considering both pre-birth and post-birth exposures, while OEHHA staff will seek a ruling from the California Attorney General on whether DART can consider post-birth exposures in identifying substances for listing as reproductive toxicants. DART is expected to conduct its next meeting in approximately six months.

[17] Florida Health Department Releases Final Rules on Smoking

On May 4, 1994, the Florida Department of Health and Rehabilitative Services (HRS) released the final rules it adopted to implement the state's antismoking legislation, known as the Clean Indoor Air Act. Some of the original proposed rules were challenged or were declared invalid by a hearing officer. That ruling has been appealed to the First District Court of Appeal.

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The rules that remain unaffected by the challenges will be enforced by HRS; these rules set forth enforcement procedures and list those activities that will be considered violations under the Act and the penalties for the violations.

[18] Pennsylvania Legislature Considers Banning Smoking in Cars

On April 26, 1994, a Pennsylvania House subcommittee reportedly heard testimony on a bill that would make smoking in a motor vehicle a summary offense if done in the presence of passengers 15 years old or younger. Testifying in support of the measure were John Banzhaf, executive director of ASH, and a number of children with asthma. A representative of the American Civil Liberties Union reportedly challenged the proposal as an unconstitutional invasion of family privacy and an unnecessary restriction on drivers who do not pose a threat to highway safety. According to a press report, consideration of the bill has given rise to spirited debate, but it faces substantial opposition in the state legislature. *See Philadelphia Inquirer*, April 27, 1994.

ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

[19] *Bluitt*: Defendants File Motion to Dismiss Plaintiff's RICO Claims; Records Depositions of NCI, EPA Noticed

On April 28, 1994, the defendants filed a motion to dismiss plaintiffs' RICO claim for failure to state a claim. Plaintiffs asserted the RICO claim in their first amended complaint, which was filed on March 31. On April 29, Judge Jerry Buchmeyer issued an order *sua sponte* referring the defendants' motion to dismiss to Magistrate Judge John Tolle.

On May 5, defendants served document requests on records custodians of the National Cancer Institute and the Environmental Protection Agency. On June 2, the two organizations are scheduled to produce the documents defendants seek.

Plaintiffs in this action allege Willie Ruth Bluitt was a nonsmoker who died of lung cancer as a result of workplace exposure to environmental tobacco smoke. Defendants in the action are the six major U.S. cigarette manufacturers. *Bluitt v. R.J. Reynolds Tobacco Co., et al.* (U.S. District Court, Eastern District, Texas) (filed August 30, 1993).

[20] *Broin*: Defendants' Motion for Rehearing Filed; Plaintiffs' Deposition of William Cahan Taken

The plaintiffs have received an extension of time to May 18, 1994, to file their response to defendants' motion for rehearing, rehearing *en banc*, and certification to the Florida Supreme Court. The defendants' motion for rehearing seeks review of the March 15 decision by the Court of Appeals that reversed the trial court's 1992 ruling dismissing plaintiffs' class action allegations. The plaintiffs requested the extension on April 28, and an order granting the extension was entered by the Florida Court of Appeals on May 5.

Plaintiffs took the videotaped deposition of Dr. William Cahan of New York City's Sloan Kettering Hospital on May 10. The deposition was renoticed from May 11 to May 10. Plaintiffs designated Dr. Cahan as an expert witness on May 5.

The plaintiffs' deposition of James Johnston, an executive of R.J. Reynolds, has been scheduled for May 26.

On May 10, defendants noticed depositions of three of the plaintiffs. The deposition of plaintiff Gregory Strang has been noticed for June 15-16, Sharon Miller will be deposed on June 21-22, and Marilyn Mittan's deposition will be taken on July 19-20.

At issue in this case are the claims of 28 flight attendants allegedly injured by occupational exposure to ETS. In addition, the husband of one of the flight attendants claims loss of consortium. The 28 attendants purport to represent a class of approximately 60,000 other attendants.

Injuries alleged by the putative class representatives include lung cancer, breast cancer and unspecified respiratory ailments. Plaintiffs further allege that occupational exposure to ETS on board aircraft causes at least 22 diseases and a reasonable fear of contracting such diseases. The defendants are the six major U.S. cigarette manufacturers (plus related entities), UST, Inc., United States Tobacco Company, Dosal Tobacco

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Corp., the Council for Tobacco Research, The Tobacco Institute, and three trade associations. *Broin, et al. v. Philip Morris, et al.* (Circuit Court, Dade County, Florida) (filed October 31, 1991).

[21] *Butler*: Trial Date of November 28, 1994, Set; Burl Butler Dies

On May 4, 1994, the court granted the defendants' motion to vacate the trial date of September 6, 1994, and the pending discovery schedule. On May 6, the court entered a new scheduling order that sets a trial date of November 28, 1994. The scheduling order directs: depositions of plaintiffs' expert witnesses to be completed by June 17; defendants to designate their expert witnesses by July 15; the depositions of defendants' expert witnesses to be completed by August 19; discovery to be completed by September 9; all dispositive motions to be served by October 14; and the final pretrial conference to be held on October 17.

On May 5, defendants served document requests on the records custodian of the National Cancer Institute. The National Cancer Institute is to respond to the document request on June 2.

Plaintiff Burl Butler died on May 7, 1994.

On April 26, plaintiffs associated Charles W. Patrick, Jr., as additional counsel. Mr. Patrick is a member of the Charleston, South Carolina, firm of Ness, Motley, Loadholt, Richardson & Poole. Ronald Motley is also a member of the Ness, Motley firm.

Plaintiffs contend that Burl Butler, a barber from Laurel, Mississippi, developed lung cancer as a result of his exposure to environmental tobacco smoke. The defendants in this case consist of the six major U.S. cigarette manufacturers and several local retailers. *Butler v. R.J. Reynolds Tobacco Company, et al.* (Circuit Court, Hinds County, Mississippi) (filed October 21, 1992).

[22] *Castano*: Deadlines for Plaintiffs' Intervention Motion Again Extended

The deadline for defendants to respond to a motion for intervention filed by nonsmokers was extended from May 3 to May 19, 1994. The hearing on the motion for intervention was continued from May 11 to May 27.

The intervention motion was filed on April 7 by nonsmokers who claim injury from ETS exposure. They seek to intervene in a purported class action lawsuit brought by smokers who are raising claims of nicotine manipulation and addiction against a number of tobacco companies. The named movants purport to represent a class that would generally include all residents of the United States who have never smoked cigarettes and who claim to have been injured by ETS at home or in the workplace generated by persons addicted to tobacco. The proposed plaintiffs seek unspecified actual damages, a disgorgement of profits, and a judicial declaration that chronic exposure to ETS in the home or workplace is hazardous to human health. Defendants named in the motion to intervene include five major tobacco manufacturers and their parent companies. *Castano, et al. v The American Tobacco Company, et al.* (U.S. District Court, Eastern District, Louisiana) (filed March 29, 1994; motion to intervene filed April 7, 1994).

[23] *Dunn*: Defendants File Objection, Motion to Vacate Trial Setting

On May 2, 1994, the defendants filed an objection to the court's order setting the case for trial and a joint motion to vacate the trial date of March 6, 1995. In their motion, the defendants contend that the trial date should be vacated due to their pending venue appeal and to incomplete discovery. Judge Robert Barnet scheduled trial to begin on March 6, 1995, in an order entered on April 26.

Plaintiffs in this case contend that Mildred Wiley was a nonsmoker who died of lung cancer as a result of workplace exposure to environmental tobacco smoke. Her husband, Philip Wiley, is also asserting a loss of consortium claim. Defendants in the case are each of the six major U.S. cigarette manufacturers, parent companies of three of the manufacturers, The Tobacco Institute, and the Council for Tobacco Research. *Dunn v. RJR Nabisco Holdings Corporation, et al.* (Superior Court, Delaware County, Indiana) (filed May 28, 1993).

[24] *Voth*: Magistrate Judge Recommends Dismissal of Case

On April 25, 1994, Magistrate Judge John Cooney issued an order recommending that the defendants' motion for judgment on the pleadings be granted and that the action be dismissed as frivolous. Magistrate Judge Cooney also recommended that plaintiff's

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motion to strike the motion for judgment on the pleadings be denied, and that all other pending motions be denied as moot. Pending motions include plaintiff's motions for leave to file a third amended complaint and a fourth amended complaint (which sought to add several additional parties) and plaintiff's motion for a preliminary injunction, which sought to ban the sale of cigarettes in the State of Oregon.

Frank Voth, who is incarcerated in the Oregon State Penitentiary, alleges that his civil rights have been violated as a result of his exposure to environmental tobacco smoke. He claims that he has "incurred permanent health damage and is at risk of death" as a result of being exposed to ETS. Defendants in *Voth* are Forsyth Tobacco Products, R.J. Reynolds, Brown & Williamson, Philip Morris Companies and American Tobacco. *Voth v. Forsyth Tobacco Products, et al.* (U.S. District Court, Oregon) (filed April 27, 1993).

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

Shareholder Proposal

[25] ***Mercy Health Services v. Wendy's International Inc.* (U.S. District Court, New York) (filed April 1994)**

According to a press report, a shareholder in Wendy's International Inc. has sued the company for not including in its proxy a shareholder proposal requesting that the fast food restaurant chain ban smoking by 1995. The shareholder, Mercy Health Services, a Michigan-based organization run by the Sisters of Mercy Regional Community of Detroit, has apparently taken the position that the proxy was misleading because it failed to apprise shareholders of the resolution.

Securities law permits companies to omit from their proxies shareholder proposals that concern "ordinary business." A Wendy's spokesperson reportedly claimed that the issue of smoking is an operational issue and not a shareholder issue. The Securities and Exchange Commission required that similar proposals appear in McDonald's and Pepsico Inc. proxy statements. The McDonald's resolution was apparently withdrawn after that company announced it would ban smoking in its company-owned restaurants, while Pepsico shareholders were scheduled to vote on the proposal at the annual meeting on May 4, 1994. *See Rocky Mountain News*, May 3, 1994.

Residential Exposure

[26] ***Pentony v. Conrad* (Superior Court, Union County, New Jersey) (filed April 28, 1994)**

Following a two-hour hearing, a superior court judge reportedly sent the ETS complaint of town house residents to the board of directors of their cooperative complex for mediation and a recommended resolution of the dispute. The Pentonys had sought an order banning their downstairs neighbors from smoking, claiming that ETS was drifting into their unit through the ventilation system and walls. Further details about the case appear in issue 71 of this Report, April 29, 1994.

The judge apparently refused to enter an order limiting the defendants to smoking only while the Pentonys were at work. According to the judge, such an edict would be unenforceable. "Are we going to have a smoke detective on hand to see they don't cheat?," he asked the Pentonys' attorney. The judge reportedly ordered the Pentonys to buy the best "smoke-eater" made and to save the receipt for possible reimbursement by the board.

According to a press report, the judge expressed support for the contention that ETS can be declared a nuisance if it causes ill health. He evidently acknowledged, however, that the Pentonys had not proved that a nuisance existed, that the smoke entering their residence came from the defendants, or that the board of directors had done nothing to help them. *See The New York Times*, April 29, 1994.

Workplace: Disability

[27] ***McGuire v. Office of Personnel Management*, 1994 U.S. App. LEXIS 9348 (U.S. Court of Appeals, Federal Circuit) (decided April 28, 1994)**

The Federal Circuit Court of Appeals has refused the request of a federal employee, allegedly disabled due to chronic asthmatic bronchitis aggravated by ETS exposure, to transfer from the Civil Service Retirement System to the Federal Employees Retirement System.

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The court found that her transfer request occurred after her effective retirement date when she was no longer a federal employee. Employee Georgia McGuire also sought reinstatement, claiming that her retirement was involuntary and was necessitated by her purported allergic reaction to ETS in the workplace. Because that issue was not before the court on this appeal, the matter was not considered further.

Prisoner Cases

[28] *Sutherland v. Overton, et al.*, 1994 U.S. App. LEXIS 9909 (U.S. Court of Appeals, Sixth Circuit) (decided May 2, 1994)

The Sixth Circuit Court of Appeals has determined that a Michigan prison inmate's Eighth Amendment claims related to ETS exposure were properly dismissed by a district court judge. The inmate, William Sutherland, had alleged that prison and medical officials demonstrated a deliberate indifference to his needs by not placing him in a smoke-free environment. The record in the case indicated, however, that (i) Sutherland's sinus problems were effectively treated with antibiotics; (ii) medical personnel did not prescribe a smoke-free environment for him, but he was placed in a nonsmoking housing unit at his request; and (iii) prison housing officials enforced the smoking prohibition by transferring prisoners who violated the rule.

[29] *Beauchamp v. Sullivan*, 1994 U.S. App. LEXIS 8412 (U.S. Court of Appeals, Seventh Circuit) (decided April 21, 1994)

The Seventh Circuit Court of Appeals has dismissed as frivolous a suit filed by a Wisconsin prison inmate who challenged, on Eighth Amendment and equal protections grounds, the prison's indoor smoking ban. The inmate had failed to allege that he was a smoker; thus, the court found he lacked standing to bring the suit. The inmate also had failed to allege that smoking privileges were removed as "a form of torture by police or guards." According to the court, because the U.S. Supreme Court had said in *Helling v. McKinney*, 113 S. Ct. 2475 (1993), that prison officials might have a constitutional duty to protect inmates from high levels of ETS, a prison "could hardly be thought to be violating the Constitution by restricting smoking in the manner illustrated by the present case."

Workplace: Collective Bargaining

[30] *U.S. Department of Veterans Affairs Medical Center Northport, New York and National Federation of Federal Employees Local 387*, 1994 WL 99970 (Federal Labor Relations Authority) (decided March 24, 1994)

The Federal Labor Relations Authority (FLRA) has determined that the VA did not build adequate outdoor smoking shelters under its collective bargaining agreement with the union representing its employees. An arbitrator had ordered the VA to comply with the agreement, which also required the establishment of smoking cessation classes, and the VA filed exceptions to the award, claiming that it would violate government-wide policy by directing the medical center to return to a policy of allowing smoking indoors.

In affirming the arbitrator's award, the FLRA noted that the arbitrator's award did not require that the VA permit smoking indoors at the medical center. The arbitrator merely required the VA to establish a committee to address the adequacy and accessibility of the shelters, after finding that the shelters did not properly protect smoking employees from local weather conditions and were located near trash containers.

[31] *Matter of Department of the Navy Fleet and Industrial Supply Center Pensacola, Florida and Local 1960, American Federation of Government Employees, AFL-CIO*, 1994 WL 85960 (Federal Service Impasses Panel) (decided March 10, 1994)

The Federal Service Impasses Panel has resolved a negotiating dispute over break time by adopting the employer's proposal which would give all employees a 15-minute break in the morning and a 15-minute break in the afternoon. The union had sought discretionary breaks amounting to no more than 15 minutes for every four hours worked in order to accommodate smokers and computer operators who preferred to take several shorter breaks in each four-hour period. Despite the fact that the union's position had been existing practice for the previous 15 years, the panel rejected this proposal, finding

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that it was counter-productive, difficult to enforce and conducive to allegations of unfair treatment.

Toxic Chemical Warnings

[32] *Environmental Defense Fund v. Parks Corp.*, No. 941241 (Superior Court, San Francisco County, California) (unknown filing date)

A jury has reportedly returned a verdict against the manufacturer of a paint stripper containing a substance listed in California under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) as a carcinogen. Evidently, the defendant was unsuccessful in challenging the constitutionality of Proposition 65.

On March 7, 1994, following a nine-day trial, the jury determined that methylene chloride was subject to the requirements of the Act as a carcinogen and that the warnings used by the defendant were insufficient to apprise consumers of the danger posed by exposure to its products. A penalty of $210,000 was imposed and will reportedly be divided between the California hazardous substance account, a local hazardous substance entity and the plaintiff, a nonprofit group that brought the suit as a private attorney general. This case is apparently the first to go to a jury under Proposition 65. *See Toxic Chemicals Litigation Reporter*, May 4, 1994. Further details about the case appear in issue 67 of this Report, March 4, 1994.

OTHER DEVELOPMENTS

[33] Timothy Leary Disobeys Smoking Laws in Texas

Timothy Leary, described in press reports as the "LSD guru during the '60s" was reportedly arrested on May 10, 1994, for smoking in a smoke-free airport. The incident occurred at the Austin Municipal Airport and the offense carries a $500 maximum fine. A police officer reportedly said Leary was detained for an hour and given an "arrest-release" citation, which is similar to a ticket and requires no bail. The 73-year-old Leary was quoted in a report as saying, "We were told by an official that smoke in the airport would get us a citation. So we did look for a policeman to check this out." He said he wanted to draw attention to people being "demonized" by the politically correct. A court hearing is scheduled for May 25.

Leary, a former Harvard psychologist, purportedly encouraged students during the 1960s to experiment with LSD, was arrested several times and fled to Algeria in 1976 after escaping from prison. He has been writing and lecturing in the United States since 1976. *See The Associated Press*, May 11, 1994.

[34] IRS Workers Complain About IAQ Problems

Employees of the Internal Revenue Service (IRS) have reportedly filed a petition with the federal government, seeking IAQ improvement in their two-story building in Garden City, New Jersey. The 140 employees represent half of the workforce occupying the building and apparently claim to be suffering from headaches, respiratory problems, eye irritation and fatigue. Their claims were reportedly bolstered by a report released on March 10, 1994, by the U.S. Public Health Service, finding numerous IAQ problems and suggesting ventilation system improvements. Evidently, temperature problems, fungus and lack of air flow have been cited in particular as sources of health problems. *See Newsday*, May 6, 1994.

[35] Carbon Dioxide and Fungi Threaten Student Health

South Carolina state and federal health officials are reportedly investigating IAQ problems at McCracken Middle School on Hilton Head Island, S.C. Apparently, school officials released a report earlier in 1994, showing both widespread fungi infestation and levels of carbon dioxide high enough to cause lethargy and breathing difficulties. Students reportedly boycotted classes briefly to protest the IAQ conditions. *See Occupational Health & Safety News*, April 29, 1994.

MEDIA COVERAGE

[36] "Are Cigarettes Killing Your Kitty?" B. Ingram, *Boston Herald*, May 6, 1994

Several veterinarians who claim ETS exposure can be harmful to the health of cats were interviewed for this article. Among them Barbara Stein, who was veterinarian to now-deceased Morris the Cat, star of the 9 Lives tuna brand cat food television commercials. Stein attributes the long life of Morris to his "being a smoke-free cat." She says she believes ETS is a prime

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contributor to premature deaths of "hostages" among the nation's 60 million cats. She also claims she sees many cats who have developed asthma and bronchitis as a result of ETS exposure. The article says that in 1992, the Cat Fanciers Association banned smoking in indoor arenas where cat shows are held. According to a spokesperson for the organization, "That's out of concern not so much for the owners but for the cats." *See Boston Herald*, May 6, 1994.

SCIENTIFIC/TECHNICAL ITEMS

UPCOMING SCIENTIFIC MEETINGS

[37] **Indoor Air: An Integrated Approach, Gold Coast, Australia, November 27-December 1, 1994**

The Clean Air Society of Australia and New Zealand and the International Society of Indoor Air Quality and Climate are the hosts of this conference, principally sponsored by the U.S. EPA. Characterization of indoor air, health risk assessment, risk communication, mitigation, management and control, and legal and regulatory issues are all slated to be covered at the conference.

LUNG CANCER

[38] **"The Epidemiology of Lung Cancer in Women," V.L. Ernster, *Annals of Epidemiology* 4: 102-110, 1994 [See Appendix A]**

In this review, the author discusses a number of potential lung cancer risk factors. Her discussion of ETS relies heavily on the EPA Risk Assessment. The author suggests that active smoking is the most important risk factor for lung cancer, and also discusses diet, lifestyle and environmental factors.

[39] **"Recent Advances in Toxicology Relevant to Carcinogenesis: Seven Cameos," F. Roe, *Food and Chemical Toxicology* 31(11): 909-925, 1993 [See Appendix A]**

This paper is the text of the Leon Golberg Memorial Lecture, given at the BIBRA Toxicology International Annual Scientific Meeting. Dr. Roe discusses seven issues, including animal inhalation studies of tobacco smoke. In that section, he also comments on difficulties with estimating any lung cancer risk potentially associated with ETS exposure.

RESPIRATORY DISEASES AND CONDITIONS -- CHILDREN

[40] **"Asthma in Gaza Refugee Camp Children and Its Relationship with House Dust Mites," K.Y. Mumcuoglu, Y. Abed, B. Armenios, S. Shaheen, J. Jacobs, S. Bar-Sela, and E. Richter, *Annals of Allergy* 72: 163-166, 1994 [See Appendix A]**

In the homes of refugees in the Gaza Strip, high numbers of dust mites were found, which the authors suggest may be associated with asthma in children living in those homes. However, the authors also suggest that parental smoking may be associated with asthma risk as well.

ETS EXPOSURE AND MONITORING

[41] **"Gas/Particle Partitioning of Polycyclic Aromatic Hydrocarbons and Alkanes to Environmental Tobacco Smoke," J.F. Pankow, L.M. Isabelle, D.A. Buchholz, W. Luo, and B.D. Reeves, *Environmental Science and Technology* 28: 363-365, 1994 [See Appendix A]**

This paper discusses a method for investigating whether certain chemicals are present in the gas or the particulate phase of ETS.

[42] **"Sidestream Cigarette Smoke Generation and Exposure System from Environmental Tobacco Smoke Studies," S.V. Teague, K.E. Pinkerton, M. Goldsmith, A. Gebremichael, S. Chang, R.A. Jenkins, and J.H. Moneyhun, *Inhalation Toxicology* 6: 79-93, 1994 [See Appendix A]**

The authors of this paper report on the development of a new exposure system using aged and diluted sidestream smoke as a surrogate for ETS. They claim that their system is easy to set up, inexpensive and effective.

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INDOOR AIR QUALITY

[43] "Personal NO_2 Exposure Monitoring Shows High Exposure Among Ice-Skating Schoolchildren," M. Berglund, L. Braback, G. Bylin, J.-O. Jonson, and M. Vahter, *Archives of Environmental Health* 49: 17-24, 1994 [See Appendix A]

While the authors of this Swedish paper report dramatically elevated NO_2 levels associated with the use of propane-fueled ice resurfacing machines in indoor skating arenas, they also conclude that cigarette smoking is "of little importance" as a source of NO_2 exposure.

STATISTICS AND RISK ASSESSMENT

[44] "Science, Policy, and Ethics: The Case of Environmental Tobacco Smoke," (Variance and Dissent: Presentation), G.B. Gori, *Journal of Clinical Epidemiology* 47(4): 325-334, 1994 [See Appendix A]

In this first article of a series (see the three items that follow), Gio Gori challenges the EPA Risk Assessment on ETS for its approach to the scientific data on the issue, and for its policy ramifications. He also reviews the scientific data on ETS. Gori suggests that various agencies have engaged in "artful manipulations" of the data on ETS, which, he claims, are related to their desire to discourage or eliminate smoking.

[45] "Environmental Tobacco Smoke: A Public Health Conspiracy? A Dissenting View," (Dissent A), W. Farland, S. Bayard, and J. Jinot, *Journal of Clinical Epidemiology* 47(4): 335-337, 1994 [See Appendix A]

In a response to Gori's article (see preceding item), three EPA employees defend EPA's risk assessment methodology. They also deny his suggestions of a "conspiracy" in the way ETS is treated by public health scientists, and of scientific misconduct in the preparation of EPA's Risk Assessment.

[46] "Respiratory Health Effects of Passive Smoking: EPA's Weight-of-Evidence Analysis," (Dissent B), J. Jinot and S. Bayard, *Journal of Clinical Epidemiology* 47(4): 339-349, 1994 [See Appendix A]

In a second response to Gori's article (see two preceding items), two authors of the EPA Risk Assessment on ETS defend the conclusions of that document. They deny Gori's claims of scientific misconduct.

[47] "Reply to the Preceding Dissents," (Response), G.B. Gori, *Journal of Clinical Epidemiology* 47(4): 351-353, 1994 [See Appendix A]

In a final discussion in this series (see three preceding items), Gio Gori reiterates his position concerning the EPA Risk Assessment on ETS, and the general treatment of ETS by the government and the public health community. He calls for objective treatment of scientific data in risk assessments in general.

IN EUROPE & AROUND THE WORLD

REGULATORY AND LEGISLATIVE MATTERS

CANADA

[48] Saskatchewan Bans Smoking in Legislature

On May 3, 1994, the Saskatchewan government reportedly voted to ban smoking in the legislature's building. The new policy, effective on July 1, will apply to everyone in the building, including cabinet ministers. *See Financial Post,* May 4, 1994.

DENMARK

[49] Health Officials Reject Nicotine Limits

Press reports indicate Denmark's occupational health officials have rejected a proposal to introduce threshold levels for airborne nicotine from tobacco smoke in the workplace. The officials explained their decision by noting that tobacco smoke contains so many elements that it would be difficult to specify such boundaries.

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See Berlingske Tidene, April 21, 1994; *Ritzau (RB)*, April 21, 1994.

HONG KONG

[50] Legislation to Require Signs at Restaurants

The Hong Kong government reportedly has announced that legislation requiring restaurants to display signs outside their premises stating whether or not they provide no-smoking areas will be introduced to the Legislative Council on June 8, 1994. The legislation is also said to include a ban on the sale of tobacco to anyone under the age of 18, requirements that all tobacco products display health warnings and further unspecified restrictions on advertising.

Press reports quoted restaurant managers as stating that although they would follow the new rules, few thought it would affect their businesses and none planned to actually change their policies because of the law. A government spokesman, quoted in a media article, reportedly described the legislation as "just one more step in a slow process of change" and is intended "to enable the customer to make an informed choice." *See Reuters*, May 3, 1994; *The South China Morning Post*, May 5, 1994.

ISRAEL

[51] Probe Into Rabin's Refusal to Sign Bill Requested

An antismoking society reportedly has requested State Comptroller Miriam Ben-Porat to investigate Prime Minister Yitzhak Rabin's refusal to sign an amendment that would ban smoking in the country's 60,000 workplaces. The director and legal adviser of the Society for the Prevention of Smoking, Amos Hausner, reportedly said that Rabin's refusal to formally sign an amendment initiated by the Health Ministry and approved by the appropriate Knesset committee is unprecedented. Rabin is currently serving as the acting Israeli Health Minister.

The press report indicates that an assistant to Ben-Porat would not comment directly on the society's request, but did say that her office is looking into the matter as part of its regular examination of government functions. The report also indicates that Rabin's aides have refused to comment on the matter, except to say that Rabin, who is described as a heavy smoker, would feel "hypocritical" about signing the amendment.

Meanwhile, the report also notes that representatives of the society met with a Health Ministry official and the head of the Association for Medicine According to Halacha (Rafah) to plan an antismoking campaign in the haredi community. The group purportedly agreed to assemble a group of medical experts who would declare in writing that smoking is deadly and ask rabbis to speak out against the habit. They also plan to place antismoking advertisements in the haredi press, to be paid for by the Health Ministry, and to set up antismoking stands in religious neighborhoods. Rafah head Rabbi Yehoshua Scheinberger also reportedly stated that special study areas for nonsmokers will be set up in the Jerusalem yeshivot. *See The Jerusalem Post*, May 4, 1994.

NORWAY

[52] Nursery School Heads Favor Bans

According to a press report, a survey of nursery school and kindergarten directors conducted by the Norwegian Cancer Association found support for prohibiting smoking on school premises. Of those surveyed, 38 percent of the principals, 45 percent of the department heads and 37 percent of the assistants reportedly favored a total ban on smoking. The majority of the children's parents also were said to have expressed support for smoke-free indoor premises. The survey also determined that about one-third of nursery schools and kindergartens already prohibit smoking both indoors and outdoors and 27 percent of playhouses prohibit smoking indoors. *See Aftenposten*, April 13, 1994.

ETS-RELATED LITIGATION NOT INVOLVING THE TOBACCO INDUSTRY

JAPAN

[53] *In re: Fumio Itako* (Tochigi Prefecture) (filed June 1992; settled April 1994)

According to a press report, an employee of East Japan Railway Co. has agreed to accept a court-mediated compromise on his claim for compen-

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sation for injuries he alleged were caused by ETS exposure in the workplace. Employee Fumio Itako reportedly agreed to drop the case, while his employer agreed to take efforts to improve smokers' manners and promote nonsmokers' rights at the station in which Itako works. Further details about the case appear in issue 28 of this Report, August 14, 1992.

Since the suit was filed, East Japan has evidently banned smoking at Itako's station office and nonsmoking hours were established in the employee break room. Itako claimed in this regard that his action "has been meaningful." Itako is reportedly not fully satisfied with the settlement of his case, however, as he had hoped the policy would be extended to all of his employer's stations.

The director of an organization promoting nonsmokers' rights reportedly said that seven similar cases have been filed in Japan. According to director Bungaku Watanabe, four are still pending, two have been dismissed and one was settled out of court. *See The Japan Times*, April 20, 1994.

LEGAL ISSUES AND DEVELOPMENTS

AUSTRALIA

[54] "Courts Send Out Strong Signals on Passive Smoking," Bruce Lilley, *Australian Safety News*, March 1994

In this article, the author, who is affiliated with the Barker Gosling Legal Group, suggests that employers should implement workplace smoking bans "as quickly as possible." He bases his recommendation on his assertion that "Australian courts have established links between passive smoking and disease among non-smokers." And he notes that employers have a duty under common law and the occupational health and safety legislation in all states to provide a safe workplace for all employees.

OTHER DEVELOPMENTS

AUSTRALIA

[55] Billboard Defacer Claims ETS-Related Defense

A Hobart man who is on trial for defacing cigarette billboards reportedly claims that he was acting out of self defense against the alleged effects of ETS. "I believed my actions would have the effect of reducing people's smoking behavior which was harmful to me and everybody else, and costly to the community in terms of health care," said the accused, who apparently claims he is an asthmatic. According to a press report, the defense is being funded in part by the AMA. *See Sydney Morning Herald*, May 11, 1994.

[56] ETS as Legal Issue is Part of Tourism Curriculum

The Bond University Law School, Gold Coast, is reportedly offering a course to tourist industry workers that includes discussion of issues related to ETS, among other matters. *See Daily Telegraph-Mirror*, April 27, 1994.

CANADA

[57] Ontario Schools, Grounds Smoke Free

The vast majority of schools and school grounds in Ontario are smoke free, according to a report of the results of a survey recently conducted by the Heart and Stroke Foundation of Ontario. The survey reportedly found that 95 percent of all schools and 81 percent of all school grounds in the province are smoke free. The findings were part of a survey taken of 300 teachers and principals in the province's elementary schools, which was designed to identify current attitudes, knowledge and behaviors related to the promotion of the heart health of children. *See Canada NewsWire*, May 2, 1994.

HONG KONG

[58] Sick Building Syndrome Costing Companies Billions

According to a recent press report, sick building syndrome (SBS) causes thousands of workers to miss work because of illnesses they have contracted at their workplaces. According to purported experts inter-

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viewed for the article, the problem can be financially crippling to Hong Kong businesses and is costing them billions of dollars. The territory is apparently just recovering from a flu outbreak that some are attributing to SBS. Health problems among workers are reportedly being largely blamed on inadequate and poorly maintained ventilation systems. *See South China Morning Post*, May 1, 1994.

SWEDEN

[59] Institute to Launch Antismoking Campaign

A Swedish Public Health Institute report stating that smoking and exposure to cigarette smoking could be harmful to some sectors of the service industry purportedly will serve as the basis of a nationwide campaign against environmental tobacco smoke. The report is said to assert that the ability of waiters and professional chauffeurs to handle heavy weights could be reduced because of their ETS exposure. The report also states that other professional groups, including welders and office staff, could be affected as well, because exposure to dust and solvents, combined with cigarette smoking, reduces the body's ability to cope with stress due to impaired blood circulation. *See Goteborgs Posten*, April 14, 1994.

UNITED KINGDOM

[60] Hospitality Industry to Evaluate Smoking Policies

Caterer & Hotelkeeper reports that many restaurateurs and hoteliers in the U.K. are currently reviewing their smoking policies in light of growing pressure from the antismoking lobby and the government's stated target of achieving smoke-free policies in 80 percent of public places by the end of 1994. The article states that restaurants and hotels do not currently have policies that reflect accommodation for the more than 70 percent of the population who do not smoke. Controversy apparently continues with regard to pubs, with a majority of pub owners claiming they will lose business if they institute smoking policies, according to a recent poll. *See Caterer & Hotelkeeper*, April 28, 1994.

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APPENDIX A

The numbers assigned to the following article summaries correspond with the numbers assigned to the synopses of the articles in the text of this Report.

LUNG CANCER

[38] "The Epidemiology of Lung Cancer in Women," V.L. Ernster, *Annals of Epidemiology* 4: 102-110, 1994

"In 1987 lung cancer surpassed breast cancer as the leading cause of cancer death in US women. The disease currently accounts for 22% of female cancer deaths, an estimated 56,000 deaths in 1993. Many more women are diagnosed with breast cancer (32% of all newly diagnosed cancers in US women, compared to 12% for lung cancer), but the much poorer survival for lung cancer, coupled with its dramatically increasing rates of occurrence over time, accounts for its higher death rates today. Lung cancer is imminently preventable, as 80 to 90% of cases in the United States are currently attributable to cigarette smoking. This article describes trends in female lung cancer incidence and mortality by race and age, provides staging and survival statistics, and reviews the evidence on smoking and female lung cancer, as well as other risk factors for the disease."

"The US Environmental Protection Agency (EPA) recently issued a risk assessment report on the health effects of passive smoking, which classified environmental tobacco smoke (ETS) as a group A carcinogen (along with radon, asbestos, and benzene) and concluded that ETS causes lung cancer in nonsmokers. The report mirrors and strengthens the conclusions of earlier reviews of the evidence from the Surgeon General and the National Research Council. There are now approximately 30 epidemiologic studies from around the world, mostly case-control studies, that have compared the risk of lung cancer in nonsmoking women married to men who smoke with that in nonsmoking women whose husbands were nonsmokers. Perhaps the best designed study reported to date is that of Fontham and associates. Pooling the results of nine case-control and two cohort studies from the United States and adjusting for potential smoker misclassification, the EPA reported a summary estimate of the relative risk of lung cancer associated with ETS of 1.19 (90% confidence interval (CI): 1.04 to 1.35); risk was higher when adjusted for background ETS exposures. There also is good evidence for a dose-response relationship; the pooled estimate for the highest exposure levels from the seven US studies with good exposure-level data is 1.38 (90% CI: 1.13 to 1.70), corrected for smoker misclassification bias. Several studies found no significant association between spousal smoking and risk of lung cancer in nonsmokers, and there are inconsistencies across studies on the effect of ETS exposure during childhood or at the workplace. There also are inconsistencies across studies regarding the relationship of ETS to specific histologic types of lung cancer, although the numbers of cases in specific histologic categories usually are quite small. One methodologic concern in such studies relates to the accuracy of self-reported histories of ETS exposure, although in the few studies that examined this issue, self-reports of ETS exposure appeared to be positively associated with cotinine levels. Based on the weight of the evidence from the 11 US studies, the EPA report estimated that 1500 of the 38,000 lung cancer deaths among female nonsmokers in 1985 (3.9%) were attributable to ETS."

"Although smoking accounts for the vast majority of lung cancers today, other factors play a role in the etiology of the disease. The role of certain occupational exposures in lung cancer is well established, including exposures to asbestos, ionizing radiation, arsenic, and polycyclic aromatic hydrocarbons, among others, although most of the evidence comes from studies in men. Environmental exposures that have been studied in women include radon and indoor air pollution, in particular that associated with coal burning in China."

"Over the past 15 years, numerous studies examined the relationship of dietary factors to lung cancer risk. . . . Although not all studies agree, the most consistent finding was that of a reduced risk associated with consumption of vegetables or fruit. . . . To date there are insufficient data on the effects of other nutrients on lung cancer risk, although studies suggested a possible decreased risk associated with vitamin C consumption, an inverse or no association for Vitamin E, and a possible increased risk associated with dietary fat or cholesterol consumption."

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